

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 3783/2005 & CRL.MA 7977/2005(stay)

Date of decision : 25th February, 2008

FORTUNE STONES LTD & ORS Petitioners
Through Mr. Harish Gulati with
Mr. Anindya Malhotra, Advocates.

versus

REGISTRAR OF COMPANIES, NCT OF DELHI Respondent
Through Mr. Sumit Attri, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

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| 1. Whether Reporters of local papers may be allowed to see the order? | No |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of Complaint Case No. 670/2004 pending in the Court of the learned Additional Chief Metropolitan Magistrate (ACMM), Delhi titled ***“Registrar of Companies v. Fortune Stones Ltd. & Others”*** under Section 224 (7) read with Section 629A of the Companies Act, 1956 (Act).

2. The Petitioner No.1 Company had appointed M/s T.S. Kakkar & Co. as their first statutory auditors on 8th January 1996. The accounts were audited by the said auditors till the year ending 31st March 1999. Thereafter M/s T.S. Kakkar & Co., expressed their inability to audit the accounts of the Company. Accepting the verbal resignation of T.S. Kakkar & Co., a Resolution was passed in the Meeting

of the Board of Directors of the Company on 8th June 2000 resolving to convene an extra-ordinary general meeting (EGM) to appoint new auditors. At the EGM held on 3rd July 2000 M/s D. Kothari & Co. were appointed auditors of the Company in place of M/s T.S. Kakkar & Co.

3. On 15th June 2002 M/s T.S.Kakkar &Co., filed a complaint before the Regional Director, Department of Company Affairs, Northern Region, Kanpur against the Company as well as the new auditors alleging violation of Section 224(7) of the Act. The Company offered explanation by its letter dated 25th November 2002 to the Regional Director, Northern Region, Kanpur.

4. On 9th September 2003, the Regional Director, Northern Region, Department of Company Affairs, Kanpur conveyed his sanction to the complainant Registrar of Companies (ROC), Delhi for launching prosecution against the Company. Thereafter a show cause notice was issued on 3rd October 2003 and followed by the complaint filed on 22nd December 2004.

5. One of the grounds urged by Mr.Harish Gulati, the learned counsel for the petitioners, in support of this petition seeking quashing of the complaint is that the learned ACMM took cognizance of the offence under Section 224(7) of the Act by an order dated 6th January 2005 which was far beyond the period of limitation as specified under Section 468(2)(a) CrPC. He submits that inasmuch as the offence under Section 224(7) of the Act is punishable only with fine of Rs. 500/- in terms of Section 629A of the Act, the limitation for taking cognizance of the offence is six months. He further submits that this is not a continuing offence since the failure to take prior permission of the Central Government for the removal of the auditors

could be at best a one-time offence.

6. Learned counsel appearing for the ROC submits that the offence should be treated as the continuing one since no permission of the Central Government has been obtained till date. He further seeks to invoke the provision of Section 473 CrPC to contend that the delay, if any, in the learned MM taking cognizance was a reasonable one for which explanation was available in the complaint itself.

7. A perusal of the complaint shows that the offence is for contravention of Section 224(7) of the Act which requires a company to obtain the previous approval of the Central Government for removal of the auditor at a general meeting. Admittedly the prior approval of the Central Government was not obtained when M/s T.S. Kakkar & Co., were removed as Auditors at the EGM held on 3rd July 2000. The subsequent obtaining of the permission of the Central Government cannot rectify the contravention of Section 224 (7) of the Act which mandates a prior approval. By the very nature of the statutory requirement, the contravention can constitute only a one-time offence and not a continuing one. The contention that the contravention in the instant case is a continuing one is accordingly rejected.

8. The punishment for contravention of Section 224(7) is only a fine as is evident from a reading of Section 629A of the Act which reads:

“.....the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one, with a further fine which may extend to Five Hundred Rupees for every day after the first during which the contravention continues.”

In terms of Section 468(2)(a) CrPC the learned ACMM was required to take cognizance within a period of six months. Not only was the complaint filed more than four years after the commission of the offence but the cognizance was also taken on 6th January 2005.

9. It is futile on the part of the learned counsel for the respondent to invoke Section 473 CrPC for more than one reason. The order dated 6th January 2005 of the learned ACMM, Delhi nowhere mentions any such contention having been raised by the complainant ROC. The order does not make any reference either to Section 468 or 473 CrPC. In *Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haque 2005(3) JCC 1583* the Supreme Court quashed a criminal complaint on this basis.

10. Secondly, the explanation offered in the complaint is only that the complaint could not have been filed without the prior sanction of the Regional Director, Kanpur which was received on 9th September 2003. The complaint still does not offer any explanation for the delay in the Regional Director, Kanpur according sanction although the Department of Company Affairs was made aware of the contravention on 15th June 2002 by M/s T.S. Kakkar & Co. Further they had the Company's reply dated 25th November 2002 to the show cause notice issued to it. The complaint also does not explain the delay of more than one year after grant of sanction in the ROC filing its complaint in the Court of the learned ACMM, Delhi.

11. For all the aforementioned reasons, the learned MM ought not to have taken cognizance of the offence under Section 224 (7) of the Act as it was beyond the period of limitation stipulated under Section 468 (2) (a) CrPC. In the facts and

circumstances as explained above, the petition is allowed and the Complaint Case No. 670/2004 in the Court of the learned Additional Chief Metropolitan Magistrate (ACMM), Delhi titled “*Registrar of Companies v. Fortune Stones Ltd. & Others*” and all proceedings consequent thereto are hereby quashed. There will be no order as to costs.

12. Order dasti to the counsel for the parties.

13. A certified copy of this order will be delivered to the trial court concerned within five days from today.

S. MURALIDHAR,J.

FEBRUARY 25, 2008

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